IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 24TH APRIL 2007 / 4TH VAISAKHA 1929

WP(C).No. 21301 of 2005(J)

PETITIONERS:

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1. **ANTONY, S/O.E.ANTHAPPAN, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
2. **VARGHESE, S/O.MATHAI VAREED, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
3. **J.FRANCIS, S/O.JOSEPH, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
4. **K.J.MARTIN, S/O.JANUVARIES, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
5. **K.A.ANTONY, S/O.ANTHONI, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
6. **JACOB THOMAS, S/O.THOMAS, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
7. **BENEDICT, S/O.ANTHAPPAN, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**
8. **JAMES P.D. S/O.P.A.DEVASSY, SIRKAR VELI, ARATTUVAZHY WARD, A.S.ROAD, ALAPPUZHA.**
9. **DEVASSY, S/O.ISSAC, SIRKAR VELI, ARATTUVAZHI WARD, A.S.ROAD, ALAPPUZHA.**

BY ADV. SRI.B.GOPAKUMAR,
SMT.CHINCY GOPAKUMAR,
SRI.ASWIN GOPAKUMAR,
SRI.ANWIN GOPAKUMAR.

W.P.(C). NO.21301/2005:

RESPONDENTS:
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1. **ALAPPUZHA MUNICIPALITY, REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE, ALAPPUZHA.**

2. **THE CHAIRPERSON, ALAPPUZHA MUNICIPALITY, ALAPPUZHA.**

3. **B.INRABALAN PILLAI, SECRETARY, ALAPPUZHA MUNICIPALITY, ALAPPUZHA.**

***ADDL. RESPONDENTS 4 TO 9 IMPLEADED:**

***4. VIJAYAKUMAR.T.V., KANDATHIL HOUSE, POONTHOPU WARD, ALAPPUZHA.**

***5. REMA.K., PARAMBIL VEEDU, PUNNAPRA.P.O., ALAPPUZHA.**

***6. AJITH.S., THATTARUPARAMBIL, THONDANKULANGARA WARD, ALAPPUZHA.**

***7. ASHAKUMARI.M.S., VELIYIL AARATTUVAZHY WARD, ALAPPUZHA.**

***8. MADHU V.P., KIZHAKKEVELI, AARATTUVAZHY WARD, ALAPPUZHA.**

***9. PRASAD.T.S., THYVELIKKAKOM,
VATTAYAL WARD, ALAPPUZHA.**

***ADDL. RESPONDENTS 4 TO 9 IMPLEADED AS PER ORDER DATED 31/07/2006 IN I.A. 10559/2006.**

**BY ADV. SMT.C.K.SHERIN,
SRI.L.RAJESH NARAYAN,
SRI.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/04/2007,THE COURT ON 24/04/2007, DELIVERED THE FOLLOWING:

W.P.(C). NO.21301/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DT. 06/08/01 IN O.P. NO. 22861/2001 OF THIS HONOURABLE COURT.

EXT.P.1 : COPY OF THE JUDGMENT DTD. 28/06/2006 IN W.P.(C). NOS. 30019 AND 34626/2005 OF THIS HONOURABLE COURT.

EXT.P.2: COPY OF THE CERTIFICATE ISSUED BY MUNICIPAL COUNCILLOR DT. 20/11/01 BY D. SUDARSANAN.

EXT.P.3: COPY OF THE CERTIFICATE ISSUED BY MUNICIPAL COUNCILLOR DT. 20/11/01 BY SUSHAMA.

EXT.P.4: COPY OF THE CERTIFICATE DT. 30/01/01 ISSUED BY COUNCILLOR P. JYOTHIS.

EXT.P.5: COPY OF THE CERTIFICATE BY COUNCILLOR SHEELA SABU DT. 23/11/01.

EXT.P.6: COPY OF THE CERTIFICATE BY OSHY ABRAHAM DT. 24/11/01.

EXT.P.7: COPY OF THE CERTIFICATE DT. 20/12/01 BY B. ANSARI.

EXT.P.8: COPY OF THE CERTIFICATE BY ELGIN RICHARD DT. NIL.

EXT.P.9: COPY OF THE LIST ISSUED BY THE RESPONDENT DT. 23/05/2002.

EXT.P.10: COPY OF THE GOVT. ORDER NO. GO (MS) 91/01/TVM. DT. 29/03/01.

EXT.P.11: COPY OF THE NOTICE DT. 02/09/02 NO. H.7/13246/01 ISSUED BY RESPONDENT.

EXT.P.12: COPY OF THE JUDGMENT IN O.P. 16713/02 DT. 25/02/2003 BY THIS HONOURABLE COURT.

EXT.P.13: COPY OF THE REPESENTATION BY PETITIONERS TO RESPONDENT DT. 31/03/03.

EXT.P.14: COPY OF THE NOTICE NO. H7-13246/01 DT. 22/04/03.

EXT.P.15: COPY OF THE NOTICE DT. 30/05/2003.

W.P.(C). NO.21301/2005:

EXT.P.16: COPY OF THE PAPER REPORT MALAYALA MANORAMA DAILY DTD. 13/07/2003.

EXT.P.17: COPY OF THE GOVT. ORDER G.O. (P). NO. 57/2002/GAD DTD. 18TH MARCH, 2002.

EXT.P.18: COPY OF THE NOTICE NO. H7/13246/01 DT. 08/01/04.

EXT.P.19: COPY OF THE LIST - ALAPPUZHA MUNICIPALITY.

EXT.P.20: COPY OF THE ORDER IN I.A. 10291/03 IN W.P.(C). 17046/Q3D DT. 20TH SEPT. 04 IN THE HONOURABLE COURT.

EXT.P.21: COPY OF THE MINUTES DT. 20/09/2004.

EXT.P.22: COPY OF THE ORDER H7-13246/2001 DT. 20/09/04.

EXT.P.23: COPY OF THE JUDGMENT IN W.P.(C). NO. 17046/03 (D) DTD. 13TH DEC. 04 IN THE HONOURABLE HIGH COURT.

EXT.P.24: COPY OF THE LAWYER NOTICE DT. 31/03/2005.

EXT.P.25: COPY OF THE ORDER NO.A4-593/05 DT. 15/05/05 ISSUED BY R.2.

RESPONDENT'S EXHIBIT:

EXT.R1.A: COPY OF THE ORDER NO. 39223/A3/01 DTD. 19/03/2002 OF THE GOVERNMENT OF KERALA.

//TRUE COPY//

prv.

K.K. DENESAN, J.

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W.P.(C) No. 21301 OF 2005

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Dated this the 24th April, 2007

J U D G M E N T

The case of the petitioners in brief is as follows: From 1988 onwards they were being engaged by the 1st respondent as contingent workers on daily wages for doing sanitary work. As per G.O.(MS) No. 91/2001/L&SD dated 29-3-2001 (Ext. P10) directions were issued to the local bodies to enlist daily wage employees in the contingent wing as regular employees. Government issued the above order taking note of the fact that the local bodies were terminating the services of contingent employees indiscriminately and in violation of the orders issued by the Government on the subject from time to time, G.O. dated 22-4-1982 in particular. Ext. P10 says that despite the Government Orders stressing the need for regularising the services of daily wage contingent employees who were appointed upto 31-12-1991, some of the local bodies had not cared to follow the said directions. According to the Government, vacancies arising after 31-12-1991 which were filled up afresh by daily wage employees stand on

a different footing. Those vacancies will have to be filled up by candidates sponsored by the Employment Exchanges.

2. In Ext. P10, Government examined the whole issue and decided that all daily wage contingent employees who were appointed temporarily upto 31-12-2000, even if in violation of the previous Govt. Orders, shall have the right to be enlisted as regular employees subject to the availability of vacancies. The petitioners come within that class of daily wage employees in the contingent wing who were engaged as such between 22-4-1982 and 31-12-2000. Hence, they are entitled to the benefits under Ext. P10. But the respondents denied that benefit to the petitioners. Hence, they filed O.P. No. 22861 of 2001 before this Court. As per Ext. P1 judgment this Court directed the 1st respondent to take appropriate action on the representations filed by them in the light of Ext. P10 Govt. Order. In purported compliance of Ext. P1 order, the 1st respondent enlisted the 1st petitioner as regular employee but denied that benefit to other petitioners in contravention of Ext. P10 Govt. Order. The denial of

the benefit of Ext. P10 to the petitioners 2 to 9 was the result of a distorted interpretation of Ext. P10 Govt. Order and the wrong application of that G.O. This is evident from Ext. P9 proceedings of the 1st respondent issued on 23-5-2002, contended the learned counsel for the petitioners.

3. According to the petitioners, several persons who were engaged on daily wage basis as sanitary workers long after the date of initial engagement of the petitioners and having only a few days service as such find their names included in Ext. P9 list while the names of petitioners 2 to 9 have been deliberately omitted, presumably in view of the additional condition illegally introduced by the 1st respondent into Ext. P10 Govt. Order for which the 1st respondent has no authority.

4. Feeling aggrieved by the above action of the respondents the petitioners filed O.P. No. 16713 of 2002. This Court as per Ext. P12 judgment dated 25-2-2003 disposed of the above original petition along with three other cases. In Ext. P12 this Court took note of the fact that Ext. P9 list was a provisional one and

that the petitioners have got the right to put forward their contentions for the consideration of the respondent-Municipality before the provisional list was finalised. This Court issued directions to the respondent-Municipality to look into the grievance of the petitioners. Paragraph 2 of Ext. P12 judgment, which contains the directions, is reproduced below:

> "The petitioners in OP No. 16713/02 may produce the materials to show that they are eligible to be included in the provisional list along with a copy of this judgment before the Secretary of the Municipality. The Secretary shall hear them and take a final decision on their claim within one month from the date of receipt of a copy of this judgment. In case the claim of any of the petitioners is rejected, the Secretary of the Municipality shall pass a speaking order and communicate the same to the concerned person so that he can work out his remedies against the same. In case on the basis of the hearing, if any of the persons already included in the list is sought to be excluded, he shall also be put on notice and only after hearing him a final decision in that regard shall be taken. Till the finalisation of the list, the respondents shall not introduce any fresh hand as contingent worker. After the finalisation of the list and only after engaging the persons named therein, the Municipality may go for fresh recruitment through Employment Exchange, if additional hands are required."

The petitioners filed Ext. P13 representation for the consideration of the respondent and for due compliance

of Ext. P12 judgment. The 1st respondent issued Ext. P14 proceedings informing the petitioners that their names could not be included in the list, because the records of the Municipality did not show that they had served the Municipality as sanitary workers during the relevant periods. The petitioners challenged Ext. P14 order by filing W.P.(C) No. 17046 of 2003. The said writ petition was disposed of as per Ext. P23 judgment dated 13-12-2004. In Ext. P23 judgment this Court made the following observations and issued consequential directions as well:

> "The writ petitioners claim that they had worked in the Municipality prior to 31-12-2000. It is submitted that many similarly situated workers have found their place in the list prepared by the Municipality. It is submitted that some of the workers who found a place in the list, have not worked even a day in the year 2000. Be that as it may, in case the petitioners are able to convince the Municipality that they have worked, as a matter of fact, in the Municipality prior to 2000, I do not find any reason why their case should not be considered by the Municipality. Essentially it is a matter for verification by the Municipality. There will be a direction to the Chairperson of the Alappuzha Municipality to verify the claims made by the writ petitioners and in case it is found that they are also similarly situated as some of the workers in the list dated 20-9-2004 published by the Municipality, needless to say action will be taken to include the names

> of the petitioners also in the list. The needful shall be done within a period of two months from the date of production of a copy of the judgment."

On 15-5-2005 the 2nd respondent passed Ext. P25 holding that the petitioners do not come within the ambit of Ext. P10 Govt. Order, that the records of the Municipality do not show that they had worked as temporary employees during the relevant period, and therefore, they are not eligible to be made regular contingent employees of the respondent-Municipality. In the above circumstances, this writ petition has been filed praying for a writ of certiorari quashing Ext. P14 and P25 and all steps taken by the respondents rejecting the claim of the petitioners and denying them the benefits under Ext. P10. The petitioners have prayed for a writ of mandamus directing the respondents to regularise their services in terms of Ext. P10 and on the basis of Exts. P2 to P8 certificates and other records of the Municipality.

5. This writ petition came up for admission on 19-7-2005. This Court, on that day, passed an interim order directing the respondents not to make further appointment of contingent workers till 25-7-2005. The

above interim order was extended from time to time.

6. The petitioners have complained that the respondents have appointed contingent workers in violation of the court order. C.C.C. No. 454 of 2006 filed by the petitioners praying for action against the respondent under the Contempt of Courts Act is pending disposal.

7. The respondents have filed counter affidavit so as to justify their stand as also the passing of Exts. P10 and P23. Ext. R1(a) letter issued by the Govt. Secretary on 19-3-2002 is sought to be relied on to strengthen the contention that in the absence of relevant entries in the muster roll, non-issue of wage slips and documents showing payment of wages, the claim of the petitioners that they were engaged from 1988 onwards cannot be accepted.

8. The petitioners have filed a reply affidavit. According to the petitioners, Ext. R1(a) issued subsequent to Ext. P10 cannot be used to lend support to the illegal stand taken by the respondents.

9. I have heard Shri. B. Gopakumar, learned counsel for the petitioners, Shri. C.S. Manilal,

learned counsel for respondents 1 to 3 and Shri. C.K. Sherin, learned counsel for respondents 4 to 9.

10. On a perusal of the materials available on record and consideration of the arguments of the learned counsel on both sides, two points arise for decision. (1) Whether the respondents have correctly understood and applied the provisions of Ext. P10 Govt. Order as far as the petitioners are concerned. And (2) Whether the respondents are right in taking the view that the petitioners had not worked as daily wage employees on any day prior to 31-12-2000.

Point No. 1:

The relevant portion from Ext. P10 reads:

It is therefore clear that those who were engaged temporarily upto 31-12-2000 will have the right of regularisation based on the seniority assigned to them among such class of temporary employees. Ext. P10 does not insist that those temporary employees who come within the purview of Ext. P10 order, as stated above, shall be in actual service as on the date of that order or as on 31-12-2000. I have therefore no hesitation to hold that the interpretation placed by the respondents on Ext. P10 is illegal and distorted. Petitioners 2 to 9 are the unfortunate victims of such an unjust stand taken by the respondents. These petitioners, if had worked as temporary employees on daily wages during the period referred to in Ext. P10, shall have the right to get the benefit of Ext. P10 irrespective of the fact that they were in employment on the date of Ext. P10 or Ext. P9. It is not necessary that the employment shall be continuous. No specific length of service is stipulated by Ext. P10 as condition precedent for enlistment as regular employees. I find that the list prepared by the respondent vide Ext. P9

is in derogation of the condition stipulated in Ext. P10 to the extent the names of petitioners 2 to 9 have been excluded. The exclusion of the petitioners based on a wrong interpretation of Ext. P10, is unsustainable to that extent. The respondent-Municipality has no authority to prescribe such extraneous conditions in addition to those stipulated by the Government as per Ext. P10.

11. In this context it is relevant to take note of the contentions of respondents 1 to 3 with regard to their understanding about Ext. P10, the undue importance they gave to Ext. R1(a) and their approach towards Exts. P2 to P8 certificates. Paragraph 4 of the counter affidavit is quoted below for easy reference:

> "Now, coming to the present case, the petitioners will be eligible to be appointed only if they satisfy conditions incorporated in Exhibit P10 Government Order as well as the consequential order Exhibit R1(a). But it is submitted that the petitioners herein had not continued after the year 2000 as contingent workers in the Municipality. Therefore the second limb of the condition stipulated in the clarification order has to be satisfied for getting eligible to be appointed in the Municipality as contingent worker. The petitioners who were not worked in the Municipality after the year 2000, has

> not satisfied the second limb of the clarification order, therefore their names has not found place in the list prepared by the Municipality. It is also submitted that the certificate produced by the petitioners as Exhibits P2 to P8 issued by the various Councilors has also not stated that the petitioners were engaged as contingent worker in the Municipality after the year 2000. All the above certificates only contemplate that the petitioners were engaged as contingent labour from 1988 onwards and has not stipulated that they were continuing in the said post after the year 2000. Therefore, the petitioners' contention that they are eligible for appointment cannot be sustained since there is no material to show that the petitioners have been working in the Municipality after the year 2000".

To restrict the scope of Ext. P10 Govt. Order, by reading into it views expressed in a Government letter is ex facie illegal and unsustainable. Respondents do not say that the facts stated in Exts. P2 to P8 are not correct. Respondents 1 to 3 have refused to place reliance on Exts. P2 to P8 on the wrong reason that the said certificates do not state that the petitioners had not worked in the year 2000 and thereafter. I have found that such a condition is the illegal induction of the Municipality and beyond the scope of Ext. P10.

12. It is pertinent to note that persons who had worked on daily wage basis for 11 days, 17 days, 31

days, 38 days, 41 days, etc. are included in Ext. P9 while excluding the names of petitioners 2 to 9. This has been done by inducting the wrong and unauthorised condition in Ext.P9, namely,"

It is therefore evident that the respondents wanted to make a list according to their whims and fancies, to favour some persons while practicing a hostile discrimination against persons like petitioners 2 to 9. There is merit in the contention of the learned counsel for the petitioners that the above action of the respondents lacks good faith. Point No. (1) is therefore found in favour of the petitioners.

Point No. 2:

13. The next question is whether the respondents are justified in rejecting the claim of petitioners 2 to 9 on the ground that records maintained in the Municipality do not show that they had worked as temporary employees in the Municipality. Counsel for the petitioners is right in his submission that Ext. R1 (a) Govt. letter comes into existence about one year after the issuance of Ext. P10 and that the said

Government letter cannot be the sole guideline for determining the rights of those who come within the purview of Ext. P10. It is not as though the petitioners have not produced any record at all to establish their right for regularisation on the ground that they had worked as temporary employees on daily wages from 1988 onwards. Exts. P2 to P8 are certificates issued by Shri. D. Sudarsanan, Smt. Sushama, P. Jyothis, Sheela Sabu, Shri. Joshi Abraham, B. Ansari and Elgin Richard who had the opportunity to get elected as Municipal Councilors and to serve in that capacity the Alappuzha Municipality. Shri. B. Ansari was the Vice-Chairman of the Municipal Council for some time. They have issued the certificates based on their direct and personal knowledge. The respondents have no case that Exts. P2 to P8 certificates are not genuine. The respondents have not stated in their counter affidavit that the facts stated in Exts. P2 to P8 are either incorrect or false. I find no valid reason to hold that Exts. P2 to P8 are not reliable documents. It is pertinent to bear in mind that sanitary workers engaged on daily wage basis

belong to the lowest rung in service. Most of them are practically illiterates. Records showing the period of their service are in the custody of the respondent-Municipality. From the conduct of the respondents in attempting to deny the benefit of regularisation to the petitioners even by placing a distorted and illegal interpretation on Ext. P10, the contention that the respondents have been showing a hostile attitude towards petitioners 2 to 9 cannot be brushed aside as unfounded. Under the above circumstances, to insist that the petitioners shall establish their case with reference to such documents which are in the exclusive custody of the respondents is to place a condition which, in the peculiar facts of this case, will result in a failure of justice. If only the respondents come forward with true and unbiased statements, the availability or non-availability of such records will have significance, in situations like this. Hence, I am not inclined to place much importance on the contention raised by the respondents on the nature of evidence referred to in Ext. R1(a). As already stated, there is nothing to disbelieve the certificates issued

by the councilors who were the elected representatives of the people to the municipality. There is nothing on record to discredit the certificates issued by the councilors whose direct knowledge about matters of this nature cannot be rejected as cock and bull story. The said councilors are not strangers as far as the Municipality is concerned. The facts stated by them are relevant materials. There must be convincing contra reasons to discard such certificates. The respondents have no case that Exts. P2 to P8 were issued to favour the petitioners, illegally or unjustly. In the absence of such materials, I am of the view that the respondents ought to have accepted Exts. P2 to P8 as reliable documents and the benefit of Ext. P10 ought to have been granted to all the petitioners. Point No. (2) is found in favour of the petitioners.

In the result, Exts. P14 and P25 are set aside to the extent it adversely affects petitioners 2 to 9. It is declared that the petitioners are entitled to get the benefit of Ext. P10. There shall be an order directing respondents 1 and 2 to regularise the service

of the petitioners in terms of Ext. P10 and according to their turn, accepting Exts. P2 to P8 certificates as proof of their daily wage employment during the relevant period. This shall be done as expeditiously as possible, in any event, within six weeks from the date of receipt of a copy of this judgment.

K.K. DENESAN
JUDGE

jan/